



Terms of engagement

Introduction

Denham Martin (**DM**) is a barrister and solicitor of the New Zealand High Court.

These terms of engagement (**Terms**) are the standard terms on which DM will provide legal and related services to clients in relation to any tax, trust, commercial or other legal matter. They include certain information (**Information**) which DM is required to provide to clients under the Rules of Conduct and Client Care for Lawyers issued by the New Zealand Law Society (**Rules of Conduct**).

These Terms will be deemed to be modified to the extent necessary to comply with the Rules of Conduct in force from time to time.

DM's client on any particular matter will be the party (**you**) identified in the initial engagement letter (Engagement Letter) that he provides to you along with a copy of the Terms and Information.

Agreement

Subject to any different or additional terms agreed in writing, these Terms will apply whenever you appoint DM to act for you on a matter. It will be assumed that you have read and understood these Terms when you sign the Engagement Letter or you indicate your acceptance of the Terms to DM in any other way.

Scope of DM's role

DM will represent and advise you on all legal matters that properly fall within the scope of your instructions. DM will normally set out his general understanding of those instructions (briefly) in the Engagement Letter. If you have any comments on what DM states in the Engagement Letter as to the scope of your instructions please let DM know as soon as you can. You may limit or expand the scope of your instructions at any time.

DM will act in accordance with your instructions and in terms of any applicable professional or legal obligations. He (and his staff) will use all due care and skill in doing so.

DM's duties are owed to you. Unless otherwise agreed in writing or required by law, those duties will not extend to others (including for example associated parties such as shareholders or related companies, directors or employees, or parents or other family members). If any other parties wish to retain DM they should do so by separate agreement.

Advice is given for your benefit and in your interests. If any other person wishes to rely on the advice DM gives you they can only do so if both you and he agree in writing. Similarly, DM's name and opinions may not be used in connection with any prospectus, financial statement, or other public document without his written consent.

When your instructions on a matter are completed DM's representation will end. He will only advise you further on issues arising from the matter (e.g. implementation and other dates or changes in relevant law or regulation) if you specifically engage him to do so.

Who will work with you?

DM will be the person responsible for any work done on your behalf and, even where assisted by DM staff, DM will have a significant input and oversight of your particular matter.



Confidentiality

DM regards client confidentiality as of paramount importance. Neither he nor any of his staff will disclose any confidential information obtained as a result of acting for you unless required or authorised by you, by law, or as required by the Rules of Conduct.

Fees and other charges

Generally, DM's fees reflect the time he spends on a matter, charged at his then current hourly rates and adjusted where appropriate to reflect other factors permitted by the Rules of Conduct. Those factors may include things like DM's specialist knowledge, the skills or responsibility required for the job, the amounts involved, the importance and complexity of the matter, urgency, and the results achieved.

DM's hourly rate will be outlined in the Engagement Letter as will the hourly rates of any relevant staff working on a matter (although the latter will always be lower than DM's hourly rate). These hourly rates are exclusive of goods and services tax (GST). GST will be charged to you in addition on any fees as and when required by law.

DM will on request provide you with an estimate of the likely fees for your job based on his experience with similar matters. This will be provided in the Engagement Letter. Estimates are given as a guide only and not as a fixed quotation.

DM also charges for general office services and for disbursements incurred on your behalf. These things cover:

- General office services include photocopying, facsimiles, telephone communications, deliveries, routine on-line searches, High Court research costs and inquiries and similar things. These are charged at a standard rate equal to 2.5% of DM's fees.
- Disbursements include out-of-pocket expenses such as travel and accommodation costs, registration and filing costs, court charges, fees of agents, experts and other professionals and similar things. These are charged on to you at the amount charged to DM.

For a variety of reasons your instructions may not be completed. If this occurs, DM will charge you for the work undertaken and costs incurred up to the time of termination of DM's engagement.

In some circumstances, DM may be required to incur additional time or expense following the completion or termination of your matter. DM will charge you for this time/expense in the normal way.

DM is happy to discuss any aspect of his fees and charges with you at any time.

Where it is applicable you may wish to apply for legal aid. If legal aid is granted DM's hourly rate will be different and will be notified to you in writing at the time the application for legal aid is approved. In the event that legal aid is not granted you will be liable for his account charged at the normal private hourly rates referred to above.

Payment of fees

DM's general practice is to issue an account on completion of each matter (or major component of each matter). Interim accounts on a monthly basis may also be issued where the matter is an ongoing one.

Accounts are payable (free of set off or deduction) on the receipt of DM's invoice unless the invoice is stated to be payable on an alternative date (e.g. within fourteen (14) days of the receipt of DM's invoice) or other arrangements have been specifically agreed in writing. Please raise any queries you have about any account within seven (7) days of receiving it.



If an account is not paid promptly DM may elect:

- not to do any further work, and to retain custody of your papers or files, until all accounts are paid in full;
- to charge interest at up to 10% p.a. on any amount outstanding one month after the date of the account;
- to take other action to recover unpaid fees, in which case the cost of such recovery may be added to the account due by you.

Conflicts

Given the size of the New Zealand market DM sometimes may not be able to act for you due to a conflict of interest. If this is the case DM will advise you of that fact.

If a legal conflict of interest arises in relation to any matter on which you have instructed DM, between your interests and those of any other client for whom DM is also acting (or has acted), DM will inform you of this conflict as soon as possible.

Electronic communications

Unless otherwise agreed with you, DM will communicate with you and others at times by electronic means. These communications can be subject to interference or interception or contain viruses or other defects (**corruption**). DM does not accept responsibility and will not be liable for any damage or loss caused in connection with the corruption of an electronic communication.

If you have any doubts about the authenticity of any communication or document purportedly sent by DM please contact him immediately.

External information and public records

In advising you DM may rely on or provide you with information obtained from third parties (e.g. experts or witnesses or government agencies or registers). This information may not always be accurate and complete. DM does not accept responsibility and will not be liable for any damage or loss caused by errors or omissions in information obtained from third parties.

Professional indemnity insurance

DM holds current Professional Indemnity Insurance which exceeds the minimum standards from time to time specified by the New Zealand Law Society.

The Lawyers' Fidelity Fund

The Lawyers' Fidelity Fund (Fund) exists to provide specified compensation for clients who suffer a pecuniary loss in certain circumstances. These circumstances are the theft by a lawyer of money or other valuable property entrusted to that lawyer while they are providing legal services to the public or while they are acting as a solicitor-trustee.

It should be noted though that the Fund will not pay compensation in respect of money instructed to be invested unless they are funds invested in a bank in New Zealand or in some private loans such as family loans.

This is only a short summary of the major provisions in the Lawyers and Conveyancers Act 2006 relating to the Fund. If you would like further information please ask DM.



If you have a complaint

DM will provide you with a competent and timely service following your instructions. However, if you have any complaint at all about any aspect of DM's (or his staff's) service please raise it with him directly.

If it cannot be resolved immediately to your satisfaction DM will appoint another independent solicitor or mutually agreed third party who has not been involved in your matter to deal with it promptly and fairly.

If you are still not satisfied with the outcome you have the right to take the matter up with the New Zealand Law Society which runs a Complaints Service which can be accessed through www.lawsociety.org.nz

Files and documents

DM will retain the files he establishes for you on a matter, and any documents you leave with him, for at least seven (7) years after completion or termination of the matter (unless those materials are returned to you). In the interests of storage space and costs DM may then destroy those files and documents (except files/documents which DM has agreed to keep in long-term safe custody for you). Other arrangements can be made if you prefer.

If you uplift your files or other documents at any time DM may make copies of them before they are uplifted.

Law and jurisdiction

These Terms and any other agreement DM has with you are governed by New Zealand law and are subject to the exclusive jurisdiction of the New Zealand courts.

Termination

Either you or DM may terminate this engagement at any time by giving reasonable notice.

Any fees for services reasonably and properly provided to you which are then outstanding must be paid by you prior to your uplifting your documents and records and DM may retain a copy of those documents and records.